

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION**

United States of America,)	
)	
Plaintiff,)	Criminal No.: 2:05-cr-00928
)	
v.)	
)	
)	
Michael A. Singer,)	
a/k/a Mickey Singer)	
John H. Kang,)	
John P. Sessions,)	ORDER
David A. Ward,)	
Frederick B. Karl, Jr.,)	
a/k/a Rick Karl)	
Franklyn M. Krieger,)	
a/k/a Frank Krieger)	
Ted W. Dorman,)	
)	
Defendants.)	
_____)	

This matter is before the court on the government’s motion for reconsideration and/or clarification. After extensively reviewing the parties’ briefs and hearing oral argument twice, this court held that the government did not prove by a preponderance of the evidence that the secretarial notes constitute business records under Federal Rule of Evidence 803(6)¹ or present sense impressions under Federal Rule of Evidence 803(1).

¹The court recognizes that one of the 302s submitted by the government stated that Mrs. Plumb recalled defendant Karl being provided with her notes once or twice. By contrast, Mrs. Plumb’s sworn declaration states that no one ever reviewed her notes. Irrespective of this discrepancy, the fact that one person may have seen the notes once or twice was not critical to the court’s decision that these notes do not constitute the business records of Medical Manager. In the words of a former South Carolina Court of Appeals Chief Judge—what doesn’t make a difference, doesn’t matter.

Accordingly, the government's motion to reconsider is **DENIED**.

The court did not exclude the secretarial notes under any other potential hearsay exception. Because the issue of whether the secretarial notes could possibly be admitted as a past recollection recorded under Federal Rule of Evidence 803(5) was not fully briefed, the court did not rule on that issue. Since the court did not exclude the secretarial notes, the government has not been denied the opportunity to be heard on any remaining exceptions to the hearsay rule.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Norton', written over a horizontal line.

DAVID C. NORTON
CHIEF UNITED STATES DISTRICT JUDGE

October 6, 2009
Charleston, South Carolina